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INTERSTATE COMMERCE — CONTROL BY CONGRESS — ACTION BY COURTS PRIOR TO ACTION BY THE INTERSTATE COMMERCE COMMISSION. — A coal company brought mandamus against a carrier to compel a more equitable distribution of coal cars during a car shortage. *Held*, that the petition should be dismissed, since the Interstate Commerce Commission has not acted. *Baltimore & Ohio Railroad Co. v. United States ex rel. Pitcairn Coal Co.*, 215 U. S. 481.

For a discussion of the principles involved, see 22 HARV. L. REV. 524.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — POWER TO REGULATE PRO RATÂ DISTRIBUTION OF CARS. — The Interstate Commerce Commission ordered the defendant railroad in making its *pro ratâ* distribution of coal cars to shippers during a car famine, to include in the share of each mine owner the fuel cars of the railroad which were used to transport coal purchased at the mine by the railroad for its own use. *Held*, that the order is a proper exercise of the powers of the commission. *Interstate Commerce Com. v. Ill. Cent. Ry.*, 30 Sup. Ct. 155.

The power to regulate commerce includes the power to regulate the instruments of commerce. *Hopkins v. United States*, 171 U. S. 578, 597. The Interstate Commerce Commission has, therefore, the power to compel pro-rating of cars among shippers to prevent unjust discrimination. And in the exercise of this power it may order that the private cars of a shipper be deducted from the number of cars to which he is entitled. *United States v. B. & O. Ry.*, 165 Fed. 113. In the principal case, however, the fuel cars were being used to transport coal which already belonged to the railroad and had therefore ceased to be an article of commerce. The right of the railroad to buy from whomever it chooses is conceded by the court. So if the fuel cars were not included in the share of each mine owner, he would receive a preference merely as a coal seller. Only indirectly would coal shippers be affected, to which class alone the railroad owes a duty. Such a discrimination, however, though indirect, is none the less real. The policy of preserving free competition is perhaps a sufficient justification for the liberal interpretation of the commission's power which the decision of the principal case necessitates.

MUNICIPAL CORPORATIONS — MUNICIPAL DEBTS AND CONTRACTS — LIABILITY IN QUASI CONTRACT. — A town treasurer who paid a town obligation without any previous authority sued the town in quasi-contract for money had and received. *Held*, that he cannot recover. *Baldwin v. Inhabitants of Prentiss*, 74 Atl. 1038 (Me.).

A municipality must generally pay for the benefits received under a contract *intra vires* but void because made in an unauthorized manner. *Brown v. City of Atchinson*, 39 Kan. 37, 54; *Chelsea Savings Bank v. City of Ironwood*, 130 Fed. 410, 412. But in New England towns, since the private property of the citizens can be taken upon a judgment against the town, the powers and proceedings of the town are construed with the greatest strictness. See *Bloomfield v. Charter Oak Bank*, 121 U. S. 121; *Lovejoy v. Inhabitants of Foxcroft*, 91 Me. 367. Accordingly, the opposite result has there been reached. *Otis v. Inhabitants of Stockton*, 76 Me. 506. It is clear that the plaintiff in the principal case, having not even an apparent authority from the town, cannot recover. Fatal also to the plaintiff's quasi-contractual right is the fact that no request was made by the party unjustly enriched. *Kelley v. Lindsey*, 7 Gray (Mass.) 287; *Homestead Co. v. Valley R. R.*, 17 Wall. (U. S.) 153, 166. Although contrary to the general rule, some courts have held a request unnecessary when the action is against a private person. *Perkins v. Boothby*, 71 Me. 91, 97. Yet even these courts hold that in the case of a municipality such request is necessary to maintain an action in quasi-contract. *Otis v. Inhabitants of Stockton*, 76 Me. 506. See *Perkins v. Boothby*, 71 Me. 91, 97. In cases like the present the desire to prevent unjust enrichment is counterbalanced by the desire to protect the townspeople from unwarranted expenditure by their officials, and the comparative weight attached to one or the other element accounts for the conflict in the authorities.